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CHARLES ELMORE

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1929.

No. 19.

ALEXANDER SPRUNT & SON, INC., *et al.*,
*Appellants,*

*against*

THE UNITED STATES OF AMERICA, *et al.*,
*Appellees.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.

## SUPPLEMENTAL BRIEF FOR THE APPELLANTS.

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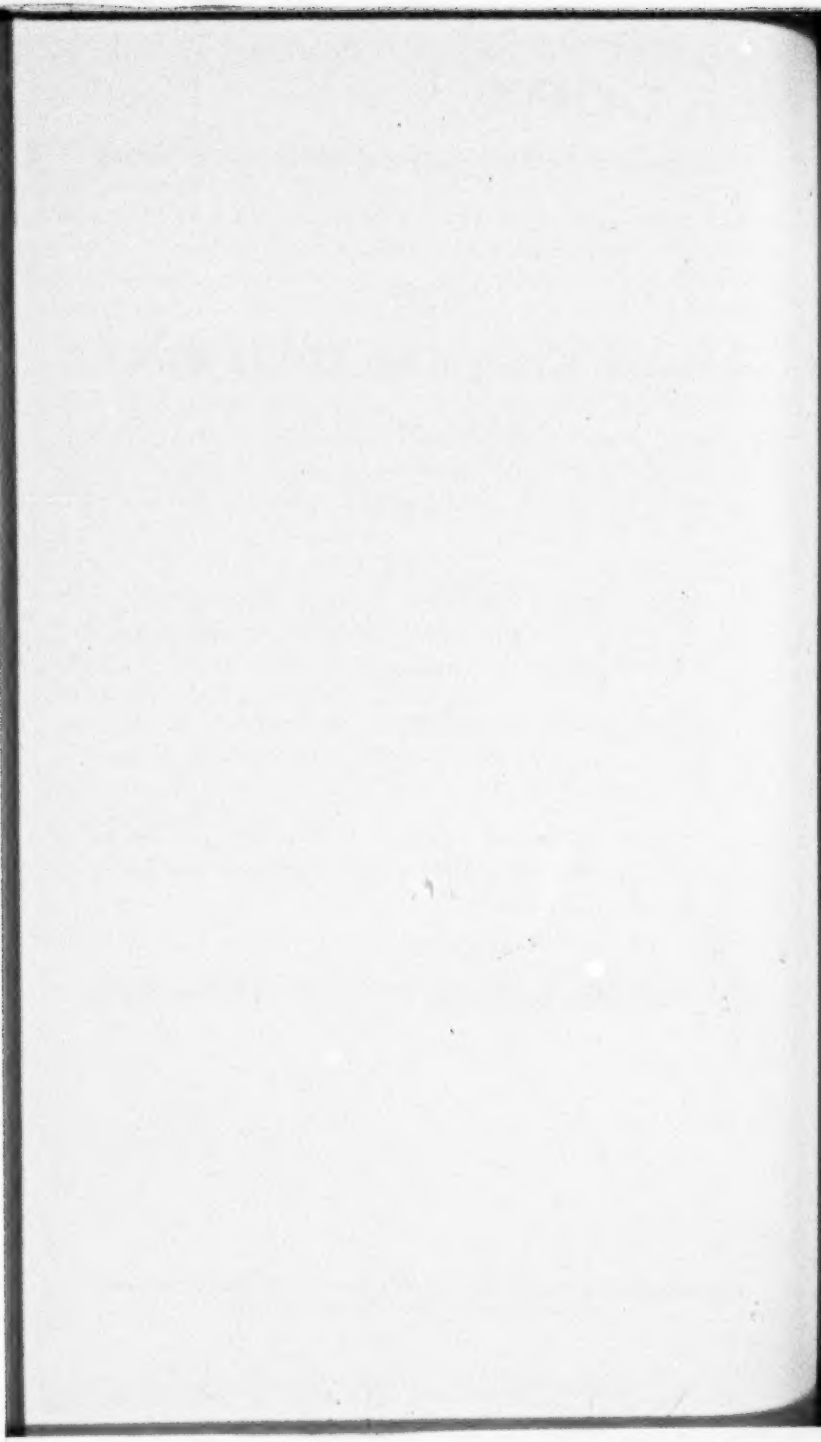

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Pursuant to leave of court granted at the oral argument on November 1, 1929, this supplemental brief is filed directed to the question raised for the first time

by Mr. Justice Brandeis and to reply to certain arguments and facts stated in appellees briefs of which time did not permit discussion at the argument.

## I. The Election of the Carriers Not to Perfect Their Appeal from the Decree of the Lower Court Does Not Affect the Right of the Appellants to Have the Order Enjoined as in Excess of the Statutory Powers of the Commission, in Violation of the Law and Therefore Void.

The question raised by Mr. Justice Brandeis was whether the election of the carriers not to perfect their appeal from the decree of the lower court destroyed the grounds of this appeal as a matter of substantive law. This resolves itself into the question of whether appellants must show that the carriers themselves could not voluntarily establish the scheme of rates and allowances prescribed because it is unreasonable, discriminatory, prejudicial or otherwise violative of the Interstate Commerce Act.

Failure of the carriers to perfect their appeal does not place appellants in the position of attacking a scheme of rates and allowances voluntarily established by the carriers. Regardless of their submission to the decree of the lower court, the carriers had no choice in the publication of the rates prescribed once the order of the Commission was permitted to go into effect by the order of the lower court. Their subsequent decision not to appeal (R. 157-8) cannot change the rights of appellants nor can it properly be considered a voluntary institution of the scheme of rates prescribed by the Commission, nor place appellants in the position of attacking a scheme of rates so instituted.

Freedom to contract is one of the elemental property rights protected by the Fifth Amendment to the Constitution. It can be regulated,—it can be interfered with in the public interest but only under authority of law and in compliance with due process. Subject to the rules of the Interstate Commerce Act, shipper and carrier alike are entitled to enter into any contract they may choose for the transportation of cotton. Though all orders of the Commission run in terms against the carriers, the effect is to fix the price, or other conditions of the contract which shippers may enter into with carriers. Nor may either shipper or carrier depart from the price or conditions so fixed. For the Commission to interfere with this right to contract in a manner not authorized by, or in accordance with the law under which it acts, means a taking of appellants property without due process and violates the Fifth Amendment to the Constitution. The Interstate Commerce Act sets up a system of limited regulation of the contracts between carriers and shippers. The Commission must keep within the limits.

Prior to the order of the Commission the carriers offered to all buyers two contracts embodying practically the same physical movements of the cars but substantially different privileges and costs. For these contracts they have made different prices, offering to all shippers of cotton a local delivery contract at one price and an export contract with its greater values and costs at a price 3 cents higher. Appellants not needing the additional services embodied in the second contract, ordinarily bought the lower priced contract for local delivery at the ports. Clearly but for the order of the Commission the carriers would have con-

tinued to offer the two contracts and appellant could continue to purchase the one they desired.

The Commission ordered the carriers to discontinue the sale of these two contracts at different prices. It went further than that. It ordered that the price of the local delivery contract used by appellants be raised one cent in order to compensate the carriers for the extra service performed under the "shipside" contracts, thus expressly recognizing the extra costs to carrier of the extra services included in the export rates.

The Commission's order, of which the report is expressly made a part, prohibits allowance to appellants for delivering cotton from their warehouses to shipside, although the Commission expressly found that "cotton delivered to the waterfront warehouses or compresses is not delivered at shipside" and that delivery to shipside was included in the tariff obligation of carriers, and authorized allowances for movement to ship's berth on wharves not adjacent to the warehouses. (R. 45, 68.) That this cost of delivery to shipside is a material item is shown by the testimony of Witness Steele for the Shipside Density Compress at Galveston that only about 6 cents per bale was saved in case of delivery to adjacent wharves compared to delivery at other piers at Galveston, where the average drayage charge was 18 cents per bale. (R. 208.) It is shown further by the testimony of W. L. Clayton at page 501 of the record that the 3½ cent cost of delivery had not been materially reduced from the waterfront warehouses, and by the testimony of D. Sumners showing a total delivery cost of 27 cents from the Long Reach Warehouse to ships berth on the adjacent wharves. (R. 908-13.)

Exhibits Nos. 3, 4, and 5 received in evidence before the lower court, referred to at page 165 of the printed record, and made a part of the record in this court, are affidavits of officials of appellants establishing the great and irreparable injury the rate system prescribed by the Commission would do them. It would increase the rates paid 5¼ cents per bale on the 1,522,000 bales handled at their "waterfront" warehouses during the season of 1926-27, or $82,530.00 per year. It would deprive them of the advantage of the location of their facilities and place them at an actual net disadvantage as compared to interior and uptown merchants. The immediate pecuniary damages run in fact to many thousands of dollars per year and those due to the equalization prescribed to much greater sums.

That the appellants have at stake a vital and substantial interest is therefore apparent. They have been deprived of their right to purchase a local delivery contract at the rate of 80 cents (used for illustration only). The price has been increased to 81 cents by reason of a void order of the Commission. They have been refused the right to delivery at shipside by the carriers from their warehouses unless the cotton is sent to wharves owned and operated by other parties. Under these circumstances the failure of the railroads to appeal from the decree of the lower court, even if interpreted as acquiescence of one party to an illegal interference with the freedom of contract, cannot as a matter of substantive law prevent these appellants from insisting upon due process. If it were necessary for a shipper to show that the scheme of rates and allowances prescribed is itself unreasonable, discriminatory or prejudicial without reference to

whether the necessary predicates to the validity of the order of the Commission had been established, it might also be urged that the proper tribunal to pass upon such questions is the Interstate Commerce Commission. The shipper would therefore be referred back to the Commission where his complaint, bringing into issue matters just passed upon, would promptly be confronted by an order of dismissal from which he would have no appeal since such an order would clearly come under the "negative order" principle established in *Procter & Gamble v. United States,* 225 U. S. 282. This would mean that the shipper, regardless of his vital interest and the effect upon his property, has no redress from an order of the Commission though unsupported by the evidence, beyond the power of the Commission, and entered for the express purpose of regulating commercial competitive conditions. These appellants were parties to the proceedings before the Commission and their interest was recognied by the Commission. To deny their right to insist upon the invalidity of an order in which the carriers acquiesce would make Section 212 of the Judicial Code giving any party the right to challenge the order, a hollow mockery. By that section Congress has expressly conferred upon parties situated like appellants the right to challenge the validity of the order of the Commission.

Obviously, the holding in *Edward Hines Yellow Pine Trustees v. United States,* 263 U. S. 143, 68 L. ed. 216 is not applicable here. There this court said:

> "But plaintiffs could not maintain this suit merely by showing (if true) that the Commission was without power to order the penalty charges cancelled. They must show also that the order

> alleged to be void subjects them to legal injury, actual or threatened. This they have wholly failed to do. It is not alleged that the carriers wish to impose such charges, and, but for the prohibition contained in the order would do so. For aught that appears carriers are well satisfied with the order entered. Cancellation of a charge by which plaintiffs' rivals in business have been relieved of the handicap theretofore imposed may conceivably have subjected plaintiffs to such losses as are incident to more effective competition. But plaintiffs have no absolute right to require carriers to impose penalty charges."

In this case the carriers were so little satisfied that they sought to enjoin the order. They had no option regarding the publication of the rates and their decision not to appeal is not indicative of their satisfaction. Furthermore, the order the plaintiffs there sought to enjoin ordered the carriers to cease and desist from collecting a penalty charge of $10 on cars of lumber held at reconsignment points. It did not increase the charges to be paid by plaintiffs in order to compensate carriers for the additional service required by intervenors nor deprive them of the privileges granted other shippers. The only effect upon plaintiffs was to reduce the disadvantage imposed upon their competitors and enable them to compete more effectively. This case recognizes that where there is legal injury shippers may show the order is void because it is beyond the power of the Commission.

In the case of *Baltimore & Ohio R. Co. v. United States*, 264 U. S. 258, 68 L. ed. 667, the defendants contended that plaintiffs had not the legal interest necessary to entitle them to challenge the order. Plaintiffs in that case were railroads seeking to overturn

an order of the Commission giving the New York Central permission to acquire certain Chicago terminal railroads. Mr. Justice Brandeis, however, after pointing out that they had in fact a vital interest and would suffer substantial pecuniary losses, said:

> "If as suggested in Interstate Commerce Commission v. Chicago, R. I. & P. R. Co., 218 U. S. 88, 109, 54 L. ed. 946, 957, 30 Sup. Ct. Rep. 651, a legal interest exists where carriers revenues may be affected there is clearly such an interest here.
>
> "This loss is not the incident of more effective competition. Compare Edward Hines Yellow Pine Trustees v. United States, 263 U. S. 143, 148, *ante* 216, 220, 44 Sup. Ct. Rep. 72. It is injury inflicted by denying to the plaintiffs equality of treatment. To such treatment carriers are under the Interstate Commerce Act as fully entitled as any shipper."

On the basis of the 1926-1927 shipments shown in Exhibits 3, 4 and 5, these appellants will be required to pay an additional $82,530.00 in increased freight rates, and yet will be denied the service or allowance given others for moving their cotton to shipside. Clearly this comes within the above language.

In the court below the railroads complained because the additional freight collected from appellants would not cover the additional costs of the service given intervenors and a reduction in their revenues would result. Obviously this reduction of revenues is not the grievance of these appellants. *Interstate Commerce Commission v. Chicago R. I. & P. R. Co.*, 218 U. S. 88, 109 54 L. ed. 946, 957. But obviously the interference with their right to contract, the increased rates and denial of allowances are grievances of which these appellants may properly complain.

In many respects the position of these complainants does not differ from that of the shipper complainants in *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S. 42, 56 L. ed. 83. There this court approved the holding of the lower court sustaining the right of the complainants to maintain the suit on the ground that "any party whose rights of property are in danger of irreparable injury from an unauthorized order of the Commission may appeal to a federal court of equity for relief." *F. H. Peavey & Co. v. Union Pac. R. Co., etc.*, 176 Fed. 409, 417. That court also said that the "final order of the Commission, which prohibits the railroad companies from making any allowances for the elevation, necessarily deteriorates the value of the property, diminishes the volume and profit of the business, strikes down profitable contracts, and destroys the right of parties in favor of the transfer to make such contracts." This, which applies with equal force to the case at bar, was held to entitle Diffenbaugh to challenge the order of the Commission.

This specific point was not raised in the case of *United States v. New River Coal Company*, 265 U. S. 533, 68 L. ed. 1165, but by considering the validity of the objections urged to the order it may fairly be argued that this court recognized the legal interest of the plaintiffs in that suit. The order issued made the report, which held that Rule 4 governing the distribution of cars was not unreasonable, a part of the order, and dismissed certain complaints against the rule. The carriers announced that they considered themselves ordered to establish Rule 4 and threatened to do so. The New River Coal Company, and not the carriers, thereupon sought to enjoin the order. This court not only held that the rule prescribed was part of the

order, but, by proceeding to deal with the question of the validity of the order, recognized the right of the shipper to question it, even though the carriers had expressly announced their acquiescence.

In *Skinner & Eddy Corp. v. United States,* 249 U. S. 772, this court recognized the right of a shipper whose rate was being increased to enjoin the enforcement of an order on the ground that "the Commission has exceeded its statutory powers; and that, hence the order is void." That is essentially the contention of these appellants, and, as was said by Mr. Justice Brandeis,

> "In such case the courts have jurisdiction of suits to enjoin the enforcement of an order even if plaintiff has not attempted to secure redress in a proceeding before the Commission."

By consideration of the objections urged to the validity of the order of the Commission, the court sustained the legal right of shippers to insist upon the observance by the Commission of the limitations and conditions controlling its exercise of power.

In *Western Paper Maker's Chemical Company v. United States,* 271 U. S. 268, 70 L. ed. 941, the right of the shippers to require the Commission to stay within the rules was tacitly recognized. Since in the *Assigned Car Cases,* 274 U. S. 564, the railroads were involved only as the owners and users of railroad fuel cars, that case likewise sustains the right of shippers who have vital interests at stake to demand compliance with the law on the part of the Commission before it undertakes to limit the contractual rights of shippers.

In the Sacramento case, *United States v. Merchants & Manufacturers Traffic Association,* 242 U. S. 178,

61 L. ed. 233, an order granting the carriers Fourth Section relief was attacked. As pointed out by Mr. Justice Brandeis the order of the Commission was permissive merely. This as has been recognized by this court in the cases hereinbefore discussed is quite different from an obligatory order requiring the carrier to publish a specific increased rate in order to effect an equalization at appellants' expense and prohibiting the carrier from making an allowance to certain shippers. Furthermore, plaintiffs there were not parties before the Commission.

No case can be found in which shippers, having vital and substantial pecuniary interests at stake, have been denied the right to attack an order of the Commission which is unsupported by the evidence, is beyond the statutory power of the Commission, is arbitrary and in violation of law, and intended to equalize commercial conditions. Congress expressly recognized that the shippers rights were equally affected by orders of the Commission and that shippers were entitled to the same due process as carriers when it gave any party before the Commission the right to become a party to a suit calling the validity of an order in question, or, even as this court has said to institute such a suit. *Baltimore & Ohio R. Co. v. United States,* 264 U. S. 258. These appellants were parties before the Commission and their interest expressly recognized. Furthermore, as we have pointed out, they have vital pecuniary interests at stake to which the order of the Commission does violence without the due process upon which they are insisting and in direct violation of the law which it is the duty of the Commission to enforce.

## II.

Because of lack of time for doing so at the oral argument leave was sought and obtained to reply to the arguments raised and facts stated in the briefs of appellees. The remainder of this brief is devoted to that purpose.

A great deal of confusion exists in the briefs of counsel for the government and the intervenors because of their failure to distinguish between the evidence relating to the purely intrastate movement and rates and the respective interstate domestic and export movements. The order of the Commission here in controversy is expressly restricted to "export and interstate domestic rates." (Government brief, page 8.) As stated on page 24 of the government brief the Texas Commission increased the intrastate rates to the ports 1 cent per pound and it may be stated, merely as information, that an appeal from that decision is now pending in the courts of Texas.

Some significance is attached by both intervenors and government to the history of the two-rate structure. On that question we refer to the testimony of Witness West, R. 325, and Witness Dalzell, R. 331. Regardless of the history, however, the fact is the carriers had established and the Commission approved a two rate system with which the Commission had no power to interfere unless it violated the law. Interior merchants used the domestic rates as well as port merchants. Witness J. C. West, R. 189. Witness McCord, R. 203 and 205. Since unequal rates are discriminatory or prejudicial only where the service is the same or equal, there was no power in the Commission to interfere here where both the cost and value of service under the export rates were greater. The

government points out that other transportation conditions may also be considered. Brief page 47. It then points out that export rates are usually lower than domestic on other commodities. Obviously, under the doctrine of *Import Rate Case,* 162 U. S. 197, export rates may be maintained either at a higher or lower level than domestic rates depending on varying transportation rates conditions. Neither the Commission nor the government points out any transportation condition which would counteract the evidence regarding the greater service cost and value under the export rates.

At page 9 of the brief filed by the intervenors it is asserted that carriers were delivering cotton upon the wharves at shipside on the domestic rate. R. 201 was referred to. All this cotton was interior concentrated cotton. (R. 203) Witness McCord testified that these shipments were not delivered at the wharf but at the compress back of the wharf, and that the compress delivered the cotton to shipside and charged the shipper therefor. (R. 203, 205) See also testimony of Witness West at page 191 of the record. The Commission instituted Docket 14940 to investigate this very situation and found that there was nothing illegal in application of the domestic rates on shipments such as these upon which complete export service was not rendered by the carriers. (R. 45)

At page 6 of intervenors brief and at page 14 of the government brief it is stated that the two rate system resulted in actual equalization before the advent of "waterfront" warehouses. That this was not the case is shown by the following evidence.

Witness Griffin testified it cost his firm 8 cents per hundred pounds to get to the waterfront at Houston.

(R. 224-225.) Exhibit A-10 at page 8 of the Original Exhibits shows switching charges varying from $6.30 to $16.20 per car from various warehouses, and barge service at 14 cents per bale available to some and not to others. See also Exhibit A-120 (Original Exhibits page 116) and Exhibit A-7 and the following testimony: Witness Steele, R. 209; Witness Griffin, R. 224; Witness Reed, R. 217; Witness Kemper, R. 231; Witness Toombs, R. 222; Witness Eggers, R. 234-5.

These appellants are not, as the government contends at page 64 of its brief, seeking lower railroad rates to their plants than to other warehouses in the same switching limits. As a matter of fact the same rate applied to all points in the switching limits before the order of the Commission. Now appellants must pay greater cost than others by the amount of the allowance they do not get. This creates itself an illegal situation, condemned in the case of *Union Pacific Railroad Co. v. Updike Grain Co.*, 222 U. S. 215, 220, where the Court said:

> "To receive the benefit of such work by one elevator without making compensation therefor would, in effect, be the involuntary payment by such elevator of a rebate to the railroad company for it would enable the railroad to receive more net freight on its grain than was received from its competitor located on the railroad tracks. This cannot be directly done, nor indirectly by means of regulation."

The contention on page 70 of the government's brief that the order of the Commission does not prohibit allowances to appellants is sufficiently answered by *United States v. New River Company*, 265 U. S. 533, where as here the report was expressly made a part of

the order. Both the government, and the intervenors while stating that the test of the legality of the allowance is whether a substitute transportation service is rendered, refuse to apply that test to the movement of the cotton from the warehouse of appellants to shipside. The Commission found that under their tariffs the carriers were under the legal duty to make shipside deliveries and that "cotton delivered to the waterfront warehouses or compresses is not delivered at shipside." (R. 45.) That allowances were approved to wharves not adjacent is additional proof that the Commission held the carriers had not performed their complete obligation.

The method by which the shipper performs the service the carriers is obligated to render is unimportant. The government attempts to emphasize the fact that it is performed within the bounds of a single plant, ignoring the fact that the warehouse and wharf are separate facilities. (Brief, page 73.) This is of no significance anyway in view of the approval of the allowance for elevation service taking place entirely within a single plant in the Diffenbaugh case, 222 U. S. 42, and the decision in *United States v. Baltimore & Ohio R. R. Co.*, 231 U. S. 274, 58 L. ed. 218, where this court sustained an allowance to Arbuckle Brothers for handling their own sugar out of their own refinery to their own dock and themselves delivered it to the defendants west of the river, using only property and facilities that were owned by them and employees that were paid by them. The emphasis was correctly placed upon the question of whether the service for which an allowance was sought was performed in place of a service the carrier was obligated to render.

Equally fallacious is the argument that appellants

would not permit the railroads to enter their warehouse compartments. They don't ask carriers to do so any more than uptown warehouses seek to have them do so. They simply ask that the railroad deliver the cotton to shipside or pay them an allowance for doing so. It is just as convenient and necessary and no more so to them to deliver it to shipside rather than to deliver it to the cars and have the carriers switch it to the wharves as it is to uptown warehouses. As a matter of fact the drays run directly through the uptown warehouses and load the cotton on the drays and yet allowances for this service were approved. (Witness Herbelin, R. 735-6.) It is the switching of the cars to the shipside that is the service which delivery by their own methods replaces in both cases. Yet the Commission has prohibited an allowance to appellants.

The contention raised by intervenors at page 81 of their brief that the prohibition of allowances to appellants on cotton moved to shipside is merely a tariff interpretation is in direct conflict with the finding of the Commission that under their tariffs carriers were obligated to deliver the cotton "at shipside" and that this complete service had not been rendered on cotton delivered to waterfront warehouses. (R. 45.) In its order the Commission was prescribing rules for the making of tariffs, dealing with rates and allowances for the future and not with tariff interpretation.

The assertion is made at page 33 of the intervenors' brief and at page 37 of the government's brief that the *average detention* of cars containing export movements is little greater than the *free time* allowed on domestic shipments. This is not a comparison of like things but even so is not borne out by the record. Exhibit

No. A-186 (Original Exhibits, page 224) shows an average detention of 3.15 days in November, 4.58 in December, and 5.27 in January on through export cotton with 3.85 days, 3.95 days and 4.18 days on cotton marked for export in the same months.

Shipments on through export bills of lading at New Orleans were detained as much as 7 or 8 days during the months of November and December on the lines of the Gulf Coast Company. On the Louisiana Railway & Navigation Company the average detention is shown as 10 days. In the case of the Southern Pacific Company certain shipments were actually unloaded and put in the warehouses for an average of 11½ days in 1924 and 6⅛ days in 1925. On the Texas & Pacific shipments of export cotton were detained an average of 4.4 days during the months of October, November and December, 1924, and 3.5 days during the same three month period in 1925. Exhibit No. A-204 (Original Exhibit Volume, page 245).

At page 36 of their brief intervenors point out there is no testimony as to expedited service on export shipments. At page 38 of the government brief such testimony is referred to at R. 242, but it is asserted that this is not published in tariff form. Of course there is no requirement that such rules be published in tariff form, nor does that affect the cost to the carrier or value to the shipper of the expedited service which the testimony shows is rendered. See Witness Martin, R. 187 and Witness Booth, R. 242.

At page 35 of their brief intervenors state that the undisputed evidence shows the lower commercial value of the export bill. We refer to the testimony of a witness for intervenors, J. L. West, quoted on page 36 of appellants brief as well as the other testimony there referred to.

At page 37 of intervenors brief is quoted testimony of their witness Griffin to the effect that export shipments were not delivered in the carriers own terminals but to the wharves or terminal companies and that accumulation of cars in the yards was prevented. Carriers' Witness Booth testified that the export cotton congested the yards of carriers, while there was no delay on delivery at domestic rates. (R. 184.)

Pages 25 to 31 of the brief of intervenors and pages 38 and 39 of the government brief give the misleading impression that the cotton moving to the waterfront warehouses loads more lightly and receives more mixed platform service than that of interior or uptown merchants. The Commission found that the physical service performed was substantially equal. This was limited to physical handling or line haul movement of the cars as shown by the illustration given (R. 61) and by the separate treatment of the transportation elements differentiating the two services. The testimony upon which appellees rely to support this finding is likewise limited to physical handling. (Witness Reed, R. 834; Witness Cummins, R. 809; Witness Brown, R. 526.) As to the cost and value of the extra services on the export traffic which the carriers officials testified justified the higher export rates, see appellants brief pages 37 and 38.

Counsel assert that the loading on flat cotton to the waterfront warehouses is only 27 bales contrasted with 72 on export cotton. There is no testimony in the record showing the loading of flat cotton moving to the ports on interstate bills of lading or that any moves. Exhibit A-105 referred to by the intervenors covers only the movement of Texas intrastate cotton to interior concentration points. Pages 804-805 of the rec-

ord refer to exhibits covering only Texas intrastate movement of flat cotton to the ports. Flat cotton in Texas moves at the same rates as compressed in transit cotton. Interstate it moves at rates 12 cents higher so that the Texas situation is not illustrative of the movement under rates with which the Commission was dealing nor is there any showing of a movement of flat cotton interstate to the ports.

Counsel try to assimilate the advantages which the Commission found justified one free concentration in the interior to cotton moving on the export rates. Interior concentrated cotton moves on both rates and to all warehouses. Approximately one half of the cotton moved by Anderson, Clayton & Co. to the ports has had interior concentration with its attendant higher loading and less mixed platform service at the ports. (R. 296.) Of course, it is apparent that this interior concentrated cotton must itself use mixed platform service at interior points, such as Dallas and that the lesser service at the ports does not mean any actual economy. The uptown concentrator most active in the case does not buy much interior concentrated cotton. (Witness Griffin, R. 225.)

In contrast with the 72 bale loading claimed for export cotton by intervenors on the basis of the figures regarding interior concentration, the Texas & Pacific showed an average loading of only 49 bales in 1923 and 55 bales in 1924, which is lower than the loading of 63 bales on compressed in transit cotton which counsel incorrectly assert constitutes appellants chief movement. (Exhibit No. A-204, Original Exhibit volume page 252.)

On page 44 of intervenors brief the warehouse located at Symbol V on Appendix A is called a water-

front facility. This is incorrect as no wharf is operated in connection therewith and all its cotton must be moved to other wharves.

Counsel for the government on page 81 of his brief contends that the Transportation Act, 1920, amended Section 15 (1) of the Interstate Commerce Act so as to authorize the Commission to prescribe the specific manner in which the rates shall be adjusted to remove the discrimination. The 1920 Act added nothing to the power of the Commission to remove discrimination nor was it intended to give the Commission that power but to enable the Commission to prevent carriers from fixing unreasonably low rates thereby destroying competing railroad and water carriers. Report of Committee on Interstate & Foreign Commerce, Congressional Record, November 11, 1919, page 317. Congressional Record, December 17, 1919, page 743. *New England Divisions Case*, 261 U. S. 184, 190, note. At any rate this does not affect the argument that the Commission's power is limited to issuing a cease and desist order in discrimination cases. The additional power to prescribe a minimum rate is in the same category as the former power to prescribe a maximum rate. Neither is appropriate nor intended for use in such cases.

Respectfully submitted,

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